

Timeline of the Prosecution's Rule 16 Violation

2021	
Sept. 27, 2021	The prosecution obtains a search warrant for Bloomberg EMSX data relating to Archegos's trading activity. ¹
Nov. 12, 2021	Bloomberg produces one file of the Undisclosed Trade Data to the prosecution. ²
Nov. 16, 2021 (on or about)	The prosecution sends the first file to a "vendor" to divide the information by stock ticker. ³
Nov. 23, 2021	Bloomberg produces another file of the Undisclosed Trade Data to the prosecution. ⁴

2022	
Apr. 27, 2022	The indictment is unsealed. Magistrate Judge Jennifer Willis orders the prosecution to "promptly" disclose all information favorable to the accused. ⁵
May 23, 2022 & June 24, 2022	The prosecution produces trade data from EMSX maintained by Archegos, but does not produce the Undisclosed Trade Data. ⁶
Aug. 4, 2022	The prosecution produces its Bloomberg search warrant returns, but does not produce the Undisclosed Trade Data. The prosecution's production cover letter explicitly states that the production covers "Responsive Bloomberg Search Warrant Returns (21 Mag 9335)." ⁷
Sept. 8, 2022	The prosecution states at a status conference that it has "completed its Rule 16 productions." ⁸
Oct. 16, 2022	After the government fails to meet its discovery obligations in <i>United States v. Wynder</i> , the SDNY Criminal Division Chief assures the Court that the Office has "emphasized to AUSAs that we have an obligation to do what we can to minimize the chances that errors occur by staying on top of the discovery process, tracking what comes in and goes out, and maintaining adequate supervision over our paralegals." ⁹

¹ Estes Decl. Ex. A (ECF 111-1).

² Opp. at 6.

³ Opp. at 6–7.

⁴ Estes Decl. Ex. B (ECF 111-2); Opp. at 6.

⁵ Rule 5(f) Order (ECF 13).

⁶ Opp. at 9.

⁷ Estes Decl. Ex. C (ECF 111-3).

⁸ Sept. 8, 2022 Transcript at 2 (ECF 40).

⁹ Oct. 16, 2022 Letter in *Wynder*, 20 Cr. 470 (PKC) (ECF 160).

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2022	
Oct. 18, 2022	The defense writes to the prosecution asking it to clarify whether it has provided “all trading data in its possession.” ¹⁰
Oct. 24, 2022	The prosecution assures the defense that it has “provided all trading data currently in its possession.” ¹¹
Nov. 15, 2022	The defense writes to the prosecution to reiterate the request for trade data. ¹²
Dec. 2, 2022	The prosecution again represents to the defense that it has “produced to you all the trading data that we obtained.” ¹³
Dec. 22, 2022	The defense writes the prosecution about the trade data, asks if there would be a “uniform set of Archegos-related trading data,” and explains why it is important for preparing the defense. ¹⁴

2023	
Jan. 13, 2023	After no response from the prosecution, the defense follows up and asks for a call to discuss the trade data. ¹⁵
Feb. 28, 2023	On a call, the defense tells the prosecution that it intends to file a Rule 17 subpoena motion to seek the trade data from Archegos's counterparties. The prosecution wishes the defense luck. ¹⁶
July 27, 2023	The defense moves for Rule 17(c) subpoenas for the trade data from counterparties, emphasizing the importance of such trade data. ¹⁷
Sept. 13, 2023	The prosecution opposes the defense's Motion for Rule 17(c) Subpoenas, while omitting any reference to the Undisclosed Trade Data. The prosecution states that “an electronic blotter” or “a master record of trades ... almost certainly does not exist at all.” ¹⁸
Nov. 14, 2023	Oral argument is held on the defense's Rule 17(c) subpoena motion. Defense counsel emphasizes the need to obtain additional trade data containing the timing of transactions. ¹⁹

¹⁰ Estes Decl. Ex. D (ECF 111-4).

¹¹ Estes Decl. Ex. E (ECF 111-5).

¹² Estes Decl. Ex. F (ECF 111-6).

¹³ Estes Decl. Ex. G (ECF 111-7).

¹⁴ Estes Decl. Ex. H (ECF 111-8).

¹⁵ Estes Decl. Ex. I (ECF 111-9).

¹⁶ Estes Decl. Ex. K (ECF 111-11).

¹⁷ Motion for Rule 17(c) Subpoenas (ECF 79).

¹⁸ Opposition to Motion for Rule 17(c) Subpoenas at 10 (ECF 84).

¹⁹ Nov. 14, 2023 Transcript at 25–29 (ECF 93).

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2023	
Dec. 8, 2023	The prosecution omits any reference to the Undisclosed Trade Data in its expert disclosures, instead indicating that its experts would rely on the Archegos trade data that has been produced. ²⁰
Dec. 19, 2023	The defense argues in its <i>Daubert</i> motion that the prosecution's proposed experts could not have relied on the Archegos trade data that has been produced to support its analyses. ²¹
Dec. 19, 2023	The prosecution provides an exhibit list to the defense that omits any reference to the Undisclosed Trade Data. ²²

2024	
Jan. 5, 2024	At the conclusion of a phone call with the defense, the prosecution notes that it has realized a “discovery issue” relating to “additional metadata” on trades. That afternoon, the prosecution finally produces the Undisclosed Trade Data. ²³
Jan. 8, 2024	The defense files its Motion to Exclude Evidence and Compel Discovery on the Prosecution's Rule 16 Violation. ²⁴
Jan. 8, 2024	The prosecution sends a letter to the Court, calling the defense's motion a “naked attempt at gamesmanship” and referring to the Undisclosed Trade Data as “metadata.” ²⁵
Jan. 12, 2024	The prosecution admits that it violated Rule 16 and says the data is necessary for “meaningful portions of its anticipated expert testimony.” ²⁶
Feb. 20, 2024	Trial is scheduled to begin.

²⁰ See Battalio Disclosure (ECF 106-1); Seru Disclosure (ECF 106-2); Taveras Disclosure (ECF 106-3); and Mason Disclosure (ECF 106-4).

²¹ Motion to Exclude Testimony at 16–17 (ECF 105).

²² Suppl. Estes. Decl. ¶ 3.

²³ Estes Decl. Exs. L (ECF 111-12), M (ECF 111-13).

²⁴ ECF 110.

²⁵ Jan. 8, 2024 Letter (ECF 113).

²⁶ Opp. at 1.